IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7818 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KISHORCHANDRA R DAVE - Petitioner
Versus
STATE OF GUJARAT & 4 - Respondents

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Appearance :
MR GAURANG H BHATT for Petitioner : 1,
MR AMIT PATEL AGP for Respondents : 1 - 5.
MR KH BAXI for Respondent : 2,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 27/11/2007

ORAL JUDGMENT

1. The petitioner under Article 226 of the Constitution of India has approached this Hon'ble Court for issuance of writ of mandamus

or any other appropriate writ, order or direction to the respondents for promoting the petitioner to the post of Overseer in Health and Family Welfare Department with appropriate deemed date as per the record of the Government and to pay the arrears of difference of salaries which has become due and fix the seniority in the Health and Family Welfare Department.

2. The facts deserves to be set out as under.

3. The petitioner joined his service as Sub Overseer with effect from 2.8.1960 under Amreli Road and Building Division upto 15.6.1968 and thereafter under Bhadar Irrigation Sub-division, Jetpur from 16.6.1968 to 31.12.1969. The petitioner has thereafter served as Sub-Overseer from 1.1.1969 to 9.7.1970 under Amreli road & Building Division, Sub-Division, Amreli and thereafter, as Sub-Overseer under Satrunji Right Bank Canal Sub-Division, Talaja from 10.7.1970 to 21.5.1971. The petitioner has also served as Sub-Overseer under Bhavnagar (R&B) Sub-Division, Bhavnagar from 22.5.1971 to 21.4.1972 and thereafter as Sub-Overseer under Amreli (R&B) Sub-Division, Amreli from 22.4.1972 to 19.4.1973. Thereafter, the petitioner served as Overseer under PWD, R&B, Scarcity Sub-Division, Amreli from 19.4.1973 to 31.8.1973. Thereafter, the petitioner has served as Sub-Overseer under Dhari R&B Sub-Division, Dhari from 1.9.1973 to

31.3.1974 and thereafter as Sub-overseer under Surendranagar R&B, Sub-Division, Surendranagar from 1.4.1974 to 11.5.1975. The petitioner thereafter served as Overseer under Taluka Development, Muli from 12.5.1975 to 31.7.1975 and thereafter again as Sub-Overseer under Surendranagar R&B Sub-Division, Surendranagar from 1.8.1975 to 20.7.1976. Thereafter, the petitioner served as Technical Assistant from 21.7.1975 to 31.12.1976 under Public Health Sanitary Sub-Division, Limdi and Executive Engineer, Public Health Works Division, Surendranagar. Thereafter, the petitioner served as Technical Assistance at Rural Water Supply Investigation Sub-Division, Surendranagar and Executive Engineer RWS, Inv. Division, Ahmedabad from 1.1.1977 till he retired on attaining his age of superannuation i.e on 17.12.1995.

4. Shri Bhatt, learned counsel appearing for the petitioner has submitted that the petitioner has not received single promotion during his entire service carrier and therefore, he ought to have been promoted to the post of Overseer. Shri Bhatt has submitted that the petitioner was in fact not rendered surplus as original department was placed under abeyance. Shri Bhatt has invited this Court's attention to the decision of this Court in case of ***JAGDISH N. SEJPAL VS. V.M.KOTHARI,*** reported in 1993(2) GCD p.381 (Guj) and relied on para-41 of the judgment.

5. Shri Baxi, learned counsel appearing for the respondent No. 2 has submitted that the petitioner in fact was declared surplus vide order dated 15.6.1976 and as per circular dated 18.4.1978, the surplus are to be treated as junior most employee in the cadre where they are allotted in order to give them employment or continue their services. Accordingly, the petitioner came to be placed at Sr. No. 100 in the seniority list as Technical Assistant with respondent Board. As the petitioner retired in the year 1995 whereas the candidates at Sr. No. 98 and 99 are promoted only in 2004, the promotion of the petitioner as claimed for cannot be granted, specifically when the petitioner cannot claim his absorption prior to 1976.

6. Shri Patel, learned AGP has submitted that absorption of surplus employee is governed by Circular dated 18.4.1978 and petitioner could not have been promoted in light of the affidavit of the concerned officer of the GWSSB.

7. Heard Shri Bhatt, learned counsel for the petitioner, Shri Patel, learned AGP for respondent Nos. 1-5 and Shri Baxi, learned counsel for respondent No.2 and perused the record. The court is unable to accept the

submission of Shri Bhatt as though the petitioner has not very articulately stated the factum that he was in fact rendered surplus in the year 1976. It has clearly emerged from the order dated 15.6.1976 passed by the Competent Officer wherein, he has clearly mentioned that present petitioner is rendered surplus. The petitioner has been labouring under misconception that he came to be posted as Technical Assistant on 21.7.1976 in Public Health Sanitary Sub-division, Limdi on deputation and Shri Bhatt has advanced his submission on the said premise. The said premise is not available in view of the order dated 15.6.1976, which unequivocally go to show that petitioner had in fact been rendered surplus and he was therefore, to be governed by Circular dated 18.4.1978. The Board has therefore, rightly assigned him seniority at Sr. No.100 considering his absorption in the year 1976 itself. The petitioner cannot claim his absorption from any early date. The order dated 28.3.1979 though contained name of the petitioner, cannot be said to be a document conferring any right upon the petitioner for being absorbed. The order dated 28.3.1979 cannot amount to take aware the liability attached to the employer declared surplus. The subsequent order of allocation of post dtd. 28.3.1979 therefore, would be of no avail to the petitioner. Assuming for the sake of examining

the argument that the said order did confer any right upon the petitioner, then also, the entire tenor of the order go to show that it is not for conferring any right upon the employee. It is merely an order of allocation of the employee. The petitioner does not get right of being absorbed from the date of his appointment nor does he get any right of being treated at par with other employees. In view of this, the decision of this Court in case of Jagdish N. Sejpal (Supra) and observation of para-41 would be of no avail to the petitioner.

8. In view of the aforesaid, the petition fails and is therefore, deserves to be dismissed and is dismissed accordingly. Rule discharged.

(S.R.BRAHMBHATT, J.)

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